

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CF1716
	)	EEOC NO.: N/A
<b>MANUEL A. AMARO</b>	)	ALS NO.: 10-0005
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin, upon Manuel A. Amaro's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF1716; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On December 5, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Gerresheimer Glass, Inc. ("Employer") discharged him on September 23, 2008, because of his ancestry, Hispanic (Count A), and in retaliation for having opposed unlawful discrimination (Count B), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On December 2, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 4, 2010, the Petitioner filed this timely Request.
2. The Petitioner worked as a Mold Maker for the Employer. On August 1, 2008, the Petitioner complained to the Employer that he was being harassed by fellow employees because of his national origin and or his ancestry. The Employer informed the Petitioner that it would investigate the matter.
3. On August 2, 2008, and August 3, 2008, the Petitioner called in sick to work.

---

<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. During the investigation, the Petitioner stated that he was on medical leave from August 5, 2008 through September 23, 2008, although no documentation to substantiate this claim was submitted to the Respondent or the Commission.
5. On September 4, 2008, and by certified mail, the Employer sent the Petitioner a group disability form and a letter. The letter instructed the Petitioner to either return the completed group disability form to the Employer, or to contact the Employer, within five (5) days of his receipt of the letter and form. The Petitioner was instructed that his failure to comply would result in him being deemed a "voluntary quit," effective August 2, 2008.
6. On September 13, 2008, the Petitioner signed the certified mail slip which acknowledged his receipt of the September 4<sup>th</sup> correspondence. The Petitioner neither returned the completed group disability form to the Employer nor contacted the Employer.
7. On September 19, 2008, the Employer sent the Petitioner, via certified mail, a letter which stated the Employer considered the Petitioner to have resigned, effective August 2, 2008.
8. On September 23, 2008, the Petitioner signed the certified mail slip which acknowledged his receipt of the September 19<sup>th</sup> correspondence.
9. In his charge, the Petitioner alleged the Employer discharged him on September 23, 2008, because of his ancestry and in retaliation for having engaged in protected activity.
10. In his Request, the Petitioner argues that the Respondent's investigator did not do a full investigation and displayed a lack of professionalism. The Petitioner further argues that he was placed on medical leave by the Employer's Human Resource Manager and other personnel. The Petitioner attaches to his Request medical documentation of his condition. The Petitioner also denies that he resigned.
11. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence because the evidence showed that the Petitioner voluntarily terminated his employment. The Respondent found no substantial evidence of unlawful discrimination or retaliation.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

There is no substantial evidence that the Petitioner was discharged either because of his ancestry or as retaliation for opposing unlawful discrimination. Although the Petitioner contended that he was on a medical leave of absence from August 5, 2008 through September 23, 2008, the Petitioner presented no evidence to substantiate this contention.

Further, the Employer sent the Petitioner a disability form via certified mail, and gave the Petitioner an opportunity to complete the paperwork necessary for him to take approved medical leave of absence from employment. The Petitioner was placed on notice that his failure to follow the instructions outlined in the Employer's letter of September 4, 2008, would cause him to be deemed to have resigned effective August 2, 2008.

The Petitioner failed to take the steps necessary to retain his employment. Therefore, the Petitioner's own inaction caused him to be discharged. There is no substantial evidence that the Petitioner's discharge was motivated by national origin discrimination or retaliation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Gerresheimer Glass, Inc., as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

)  
)  
)

**Entered this 14<sup>th</sup> day of July 2010.**

Commissioner Munir Muhammad

Commissioner Diane M. Viverito

Commissioner Nabi Fakroddin